

REMARKS

Favorable consideration and allowance of the present application is respectfully requested.

Claims 42-68, including independent claims 42 and 59, are currently pending in the present application. Independent claim 42, for instance, is directed to a medical packaging substrate comprising a paper-based web. The paper-based web is impregnated with a saturant comprising a latex polymer emulsion. The latex polymer emulsion comprises a polyacrylate having a glass transition temperature of -20°C or less. The saturant is present at an add-on level of from about 20 to about 80 dry parts per 100 dry parts of fiber in the paper-based web. Further, the medical packaging substrate exhibits a percent bacterial filtration efficiency of at least about 95%.

In the final Office Action dated February 24, 2005, claims 21-41 were rejected under the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6,743,522. Applicants note that this rejection was withdrawn in the "Examiner's Answer" of December 8, 2005 due to the submission of a terminal disclaimer. The final Office Action also rejected claims 21-41 based on U.S. Patent Nos. 6,156,677 to Brown Reed, et al. and 4,692,374 to Bouchette. For at least the reason that Brown Reed, et al. and Bouchette fail to disclose a polymer emulsion having a *glass transition temperature of -20 °C or less*, however, this rejection was also withdrawn in the "Examiner's Answer."

Thus, the only outstanding rejection of claims 21-34 was under 35 U.S.C. § 102(b) or § 103 in view of U.S. Patent No. 5,191,734 to Weber, et al. Weber, et al. is

directed to a material for use in agricultural mulch and row covers, bags, outer covers for personal care products (e.g., diapers, feminine pads, training pants, incontinence products, and wound dressings), surgical drapes, and gowns. As pointed out in Applicants' Appeal Brief, Weber, et al. fails to disclose the claimed "medical packaging substrate" and "Bacterial Filtration Efficiency." Nevertheless, the Examiner's Answer responded that no weight is given to the preamble and the claimed Bacterial Filtration Efficiency of at least about 95% would be inherent in the teachings of Weber, et al. due to its disclosure of a latex binder having a glass transition temperature from -20°C to -50°C.

When the preamble recites a limitation in the context of the entire claim, however, it should be read as if in the balance of the claim. (*M.P.E.P.* § 2111.02). In this case, the phrase "medical packaging substrate" acts as a limitation when read in the context of the present claims. Moreover, upon review of the entirety of the present application, it is evident that such a medical packaging substrate is what the present inventors actually invented and intended to encompass in the present claims. Thus, for at least these reasons, Applicants respectfully submit that the present claims patentably define over Weber, et al.

Moreover, the present claims specifically require the use of a "polyacrylate having a glass transition temperature of -20°C." As described in the specification, such polyacrylates exhibit the most desirable bacterial filtration efficiencies in comparison to other binder systems. (See e.g., ¶ [0041]). Weber, et al. simply does not disclose a

polyacrylate having a *glass transition temperature of -20 °C or less* as required by the present claims. Weber, et al. mentions the following polyacrylate synthetic latexes:

Hycar® 26083, 26084, 26120, 26106, and 26322
Rhoplex® B-15, HA-8, HA-12, and NW-1715.

The Examples of Weber, et al. state that the glass transition temperatures of Hycar® 26322 and Rhoplex® NW-17 are -15 °C and -9 °C, respectively. Although the glass transition temperatures of the remaining polymers are not expressly recited in Weber, et al., U.S. Patent No. 5,370,132 to Weber, et al. (cited in the "Examiner's Answer") indicates the following:

<u>Latex</u>	<u>T_g</u>
Hycar® 26084	+8°C
Hycar® 26120	-11°C
Hycar® 26106	+29°C
Rhoplex® B-15	-4°C
Rhoplex® HA-8	-14°C

Likewise, the product data sheet for Rhoplex® HA-12 (enclosed herewith) indicates that the glass transition temperature is +19 °C. U.S. Patent No. 6,743,522 (cited by the Examiner in the previous double patenting rejection) also indicates that Hycar® 26083 has a glass transition temperature of -15 °C. Clearly then, Weber, et al. does not disclose a polyacrylate latex having the claimed glass transition temperature.

Weber, et al. also fails to expressly disclose the claimed bacterial filtration efficiency. Nevertheless, the Examiner previously asserted that the value is "inherent." To establish inherency, however, the evidence must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. The mere fact that a certain thing

may occur or be present in the reference is not sufficient. Simply stated, inherency may not be established by probabilities or possibilities.

In this case, the basis for the inherency rejection was said to hinge on the fact that the product and process of the claims and Weber, et al. are the same. However, Weber, et al. does *not* disclose the same materials used in the present claims, e.g., a polyacrylate latex with a glass transition temperature of -20°C or less. In fact, the Examiner previously conceded that "the basis for inherency could *not* be established" if a reference failed to disclose the claimed glass transition temperature. (Office Action of 02/24/05, pp. 3-4) (Emphasis added). In any event, Applicants note that a variety of other aspects of the claimed medical packaging substrate may influence its % BFE, e.g., the add-on level, the type of web, and so forth. In view of the wide variety of parameters that may be altered to influence % BFE, there is simply no indication that Weber, et al. would necessarily result in the claimed % BFE. Thus, for at least the reasons set forth above, Applicants respectfully submit that Weber, et al. does not disclose the claimed % BFE.

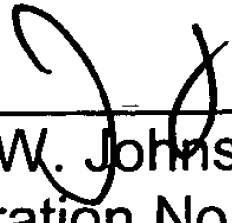
Thus, for at least the reasons set forth above, it is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Vo is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Appl. No. 09/976,411
Amdt. Dated Feb. 8, 2006
Reply to Examiner's Answer of Dec. 8, 2005

Respectfully submitted,

DORITY & MANNING, P.A.



Jason W. Johnston
Registration No.: 45,675

DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602-1449
Phone: (864) 271-1592
Facsimile: (864) 233-7342

Date: 2/8/06



RHOPLEX[®] HA-12

Self-crosslinking Acrylic Emulsion for Textiles

Rhoplex HA-12 is a general purpose binder with medium/firm hand, and excellent wash/dryclean durability. It is recommended for fabric finishing, backcoating, and other applications especially where abrasion resistance is required.

Typical Properties

The following properties should not be considered specifications.

Ionic Nature:	Nonionic
Solids %:	45.0
pH as packed:	2.6
Brookfield Viscosity, cP:	280
Glass Transition Temperature (Tg °C):	+19
Density, 25 °C lbs./US gallon:	8.8
Specific Gravity:	1.05

Rohm and Haas Company maintains comprehensive and up-to-date Material Safety Data Sheets (MSDS) on all of its products. These contain pertinent information that you may need to protect your employees and customers against any known health or safety hazards associated with our products.

Rohm and Haas Company recommends that you obtain copies of our MSDS from your local Rohm and Haas representative on each of our products prior to its use in your facilities. We also suggest that you contact your supplier of other materials recommended for use with our products for appropriate health and safety precautions prior to their use.

These suggestions and data are based on information we believe to be reliable. They are offered in good faith, but without guarantee, as conditions and methods of use of our products are beyond our control. We recommend that the prospective user determine the suitability of our materials and suggestions before adopting them on a commercial scale.

Suggestions for use of our products or the inclusion of descriptive material from patents and the citation of specific patents in this publication should not be understood as recommending the use of our products in violation of any patent or as permission or license to use any patents of the Rohm and Haas Company.

Rhoplex is a trademark of the Rohm and Haas Company, Philadelphia, PA U.S.A.